

§ 257.3

40 CFR Ch. I (7–1–11 Edition)

Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

Surface impoundment or *impoundment* means a facility or part of a facility that is a natural topographic depression, human-made excavation, or diked area formed primarily of earthen materials (although it may be lined with human-made materials), that is designed to hold an accumulation of liquid wastes or wastes containing free liquids and that is not an injection well. Examples of surface impoundments are holding storage, settling, and aeration pits, ponds, and lagoons.

Waste pile or *pile* means any non-containerized accumulation of solid, nonflowing waste that is used for treatment or storage.

[44 FR 53460, Sept. 13, 1979; 44 FR 58910, Oct. 12, 1979; 56 FR 51016, Oct. 9, 1991; 58 FR 9385, Feb. 19, 1993; 68 FR 36495, June 18, 2003]

§ 257.3 Criteria for classification of solid waste disposal facilities and practices.

Solid waste disposal facilities or practices which violate any of the following criteria pose a reasonable probability of adverse effects on health or the environment:

§ 257.3–1 Floodplains.

(a) Facilities or practices in floodplains shall not restrict the flow of the base flood, reduce the temporary water storage capacity of the floodplain, or result in washout of solid waste, so as to pose a hazard to human life, wildlife, or land or water resources.

(b) As used in this section:

(1) *Based flood* means a flood that has a 1 percent or greater chance of recurring in any year or a flood of a magnitude equalled or exceeded once in 100 years on the average over a significantly long period.

(2) *Floodplain* means the lowland and relatively flat areas adjoining inland and coastal waters, including flood-prone areas of offshore islands, which are inundated by the base flood.

(3) *Washout* means the carrying away of solid waste by waters of the base flood.

[44 FR 53460, Sept. 13, 1979; 44 FR 54708, Sept. 21, 1979]

§ 257.3–2 Endangered species.

(a) Facilities or practices shall not cause or contribute to the taking of any endangered or threatened species of plants, fish, or wildlife.

(b) The facility or practice shall not result in the destruction or adverse modification of the critical habitat of endangered or threatened species as identified in 50 CFR part 17.

(c) As used in this section:

(1) *Endangered or threatened species* means any species listed as such pursuant to section 4 of the Endangered Species Act.

(2) *Destruction or adverse modification* means a direct or indirect alteration of critical habitat which appreciably diminishes the likelihood of the survival and recovery of threatened or endangered species using that habitat.

(3) *Taking* means harassing, harming, pursuing, hunting, wounding, killing, trapping, capturing, or collecting or attempting to engage in such conduct.

§ 257.3–3 Surface water.

(a) For purposes of section 4004(a) of the Act, a facility shall not cause a discharge of pollutants into waters of the United States that is in violation of the requirements of the National Pollutant Discharge Elimination System (NPDES) under section 402 of the Clean Water Act, as amended.

(b) For purposes of section 4004(a) of the Act, a facility shall not cause a discharge of dredged material or fill material to waters of the United States that is in violation of the requirements under section 404 of the Clean Water Act, as amended.

(c) A facility or practice shall not cause non-point source pollution of waters of the United States that violates applicable legal requirements implementing an areawide or Statewide water quality management plan that has been approved by the Administrator under section 208 of the Clean Water Act, as amended.

Environmental Protection Agency

§ 257.3-5

(d) Definitions of the terms *Discharge of dredged material*, *Point source*, *Pollutant*, *Waters of the United States*, and *Wetlands* can be found in the Clean Water Act, as amended, 33 U.S.C. 1251 *et seq.*, and implementing regulations, specifically 33 CFR part 323 (42 FR 37122, July 19, 1977).

[44 FR 53460, Sept. 13, 1979, as amended at 46 FR 47052, Sept. 23, 1981]

§ 257.3-4 Ground water.

(a) A facility or practice shall not contaminate an underground drinking water source beyond the solid waste boundary or beyond an alternative boundary specified in accordance with paragraph (b) of this section.

(b)(1) For purposes of section 1008(a)(3) of the Act or section 405(d) of the CWA, a party charged with open dumping or a violation of section 405(e) with respect to sewage sludge that is not used or disposed through a practice regulated in 40 CFR part 503 may demonstrate that compliance should be determined at an alternative boundary in lieu of the solid waste boundary. The court shall establish an alternative boundary only if it finds that such a change would not result in contamination of ground water which may be needed or used for human consumption. This finding shall be based on analysis and consideration of all of the following factors that are relevant:

(i) The hydrogeological characteristics of the facility and surrounding land, including any natural attenuation and dilution characteristics of the aquifer;

(ii) The volume and physical and chemical characteristics of the leachate;

(iii) The quantity, quality, and direction of flow of ground water underlying the facility;

(iv) The proximity and withdrawal rates of ground-water users;

(v) The availability of alternative drinking water supplies;

(vi) The existing quality of the ground water, including other sources of contamination and their cumulative impacts on the ground water;

(vii) Public health, safety, and welfare effects.

(2) For purposes of sections 4004(a) and 1008(a)(3), the State may establish

an alternative boundary for a facility to be used in lieu of the solid waste boundary only if it finds that such a change would not result in the contamination of ground water which may be needed or used for human consumption. Such a finding shall be based on an analysis and consideration of all of the factors identified in paragraph (b)(1) of this section that are relevant.

(c) As used in this section:

(1) *Aquifer* means a geologic formation, group of formations, or portion of a formation capable of yielding usable quantities of ground water to wells or springs.

(2) *Contaminate* means introduce a substance that would cause:

(i) The concentration of that substance in the ground water to exceed the maximum contaminant level specified in appendix I, or

(ii) An increase in the concentration of that substance in the ground water where the existing concentration of that substance exceeds the maximum contaminant level specified in appendix I.

(3) *Ground water* means water below the land surface in the zone of saturation.

(4) *Underground drinking water source* means:

(i) An aquifer supplying drinking water for human consumption, or

(ii) An aquifer in which the ground water contains less than 10,000 mg/l total dissolved solids.

(5) *Solid waste boundary* means the outermost perimeter of the solid waste (projected in the horizontal plane) as it would exist at completion of the disposal activity.

[44 FR 53460, Sept. 13, 1979, as amended at 46 FR 47052, Sept. 23, 1981; 58 FR 9386, Feb. 19, 1993]

§ 257.3-5 Application to land used for the production of food-chain crops (interim final).

(a) *Cadmium*. A facility or practice concerning application of solid waste to within one meter (three feet) of the surface of land used for the production of food-chain crops shall not exist or occur, unless in compliance with all requirements of paragraphs (a)(1) (i)